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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:

2200 PITKIN REALTY LLC

Debtor.

Chapter 11

Case No. 17-40082-NHL

NOTICE OF DEBTOR'S MOTION FOR AN ORDER (A) AUTHORIZING THE SALE OF THE DEBTOR'S REAL PROPERTY PURSUANT TO SECTION 363(B) AND (F) OF THE BANKRUPTCY CODE AND RULES 2002, 2004 AND 9006 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE; (B) APPROVING THE CONTRACT OF SALE IN CONNECTION THEREWITH; (C) AUTHORIZING DISTRIBUTION OF SALE PROCEEDS; AND (D) FOR OTHER RELIEF THIS COURT DEEMS PROPER

HEARING DATE AND TIME:
SEPTEMBER 8, 2017, 3:30 PM

PLEASE TAKE NOTICE that on September 8, 2017 at 3:30 PM, or as soon thereafter as counsel may be heard, E. Waters & Associates, P.C. (EWA) attorney for debtor and debtor-in possession 2200 Pitkin Realty LLC (hereinafter the "Debtor"), shall move before the Honorable Elizabeth S. Stong, United States Bankruptcy Judge, at United States Bankruptcy Court, 271-C Cadman Plaza East, Brooklyn, NY 11201, for an Order authorizing the sale of the debtor's sole asset, real property located at 2200 Pitkin Avenue, Brooklyn NY 11207 (the "Property") pursuant to section 363(b) and (f) of the bankruptcy code and rules 2002, 2004 and 9006 of the federal rules of bankruptcy procedure to AML W36St Realty LLC (the "Purchaser") free and clear of any and all claims, liens, encumbrances and other interests; (b) approving the contract of sale; (c) authorizing distribution of sale proceeds; and (d) for other relief this court deems proper.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the motion shall: (i) be in writing; (ii) specify with particularity the basis of the objection; and (iii) be filed with the Clerk, United States Bankruptcy Court, United States Bankruptcy Court, 271-C Cadman Plaza East, Brooklyn, NY 11201 and simultaneously served on Debtor's Counsel, E. Waters & Associates, P.C. 89-36 Sutphin Boulevard, Suite 301-304, Jamaica, NY 11435.

PLEASE TAKE FURTHER NOTICE that unless objections are timely filed and served, the Motion shall be deemed uncontested and the relief requested may be granted without a hearing.

Dated: August 18, 2017
Queens, NY

/s/ Rashmi Attri

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:

2200 PITKIN REALTY, LLC

Debtor.

Case No.: 17-40082-NHL
Chapter 11

DEBTOR'S MOTION UNDER BANKRUPTCY CODE § 363 SEEKING ENTRY OF AN ORDER (1) AUTHORIZING THE SALE OF THE DEBTOR'S REAL PROPERTY, LOCATED AT 2200 PITKIN AVENUE, BROOKLYN NY 11207, FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, TO AML W36ST REALTY LLC; AND (2) APPROVING THE TERMS AND CONDITIONS OF THE CONTRACT OF SALE FOR THIS CONVEYANCE

The above-captioned debtor and debtor-in-possession (the "Debtor") hereby files this motion (the "Motion") seeking entry of an order, substantially in the form annexed hereto as **Exhibit A** (the "Proposed Order"), Sections 105(a), 363 and 365 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code*")*, and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") (i) authorizing the sale (the "Sale") of the Debtor's real property located at 2200 Pitkin Avenue, Brooklyn NY 11207, free and clear of all liens, claims and encumbrances and security interests of record of whatever kind or nature (the "Liens) with such Liens, if any, to attach to the proceeds of such sale in the validity, extent and priority as they presently exist, to AML W36St Realty LLC (the Purchaser") for $450,000 (ii) approving the Terms and Conditions of the Contract of Sale for said transaction and (iii) authorizing distribution of sale proceeds. In support of this Motion, the Debtor respectfully represents:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. The statutory predicate for the relief sought herein are Sections 105(a), 363 and 365 of the Bankruptcy Code, as complemented by Bankruptcy Rules 2002, 6004, 6006 and 9014.

BACKGROUND

3. On January 9, 2017 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the "Chapter 11 Case") in the United States Bankruptcy Court for the Eastern District of New York (the "Court").

4. The Debtor is a Single Asset Real Estate entity and owns a property located at 2200 Pitkin Avenue, Brooklyn NY 11207 (the "Property").

5. The Debtor remains in possession of its assets and continue to manage its operation as a debtor-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

6. No Trustee, examiner or Creditors' Committee has been appointed in this proceeding.

7. The Property has three commercial and three residential units. The tenants' payment yields the Debtor $6,650 per month.

8. Due to the non-paying tenants, the Property ended up in a foreclosure action pending in the Kings County Supreme Court titled *Bayview Loan Servicing, LLC v. 2200 Pitkin*

Realty LLC, et al., Index No. 500312/2012, where a judgment was entered. The auction and sale of the Property was stayed by the Chapter 11 filing.

9. The Property has an approximate fair market value of $755,000 based upon recent appraisal and has a first priority secured Mortgage and Security Agreement, (the "Mortgage") in the approximate outstanding amount, subject to certain dispute on amount, of $1,218,633.00 held by Bayview Loan Servicing ("Bayview").

10. On June 13, 2017, Bayview informed the office of undersigned that the subject Mortgage is eligible for a potential discounted settlement. Bayview further informed that if Debtor is willing to pursue this option, it will be structured as a short sale.

11. Since June 13, 2017, Debtor has been soliciting offers from potential buyers. From these solicitations, Debtor received indications of interest from a related party, AML W36St Realty LLC (the "Purchaser"). The negotiation with AML W36St Realty LLC progressed to the point of a Residential Contract of Sale (the "Contract"). *See* **Exhibit B** for a copy of the Contract of Sale.

12. On July 24, 2017, Debtor sent a proposal for a Discounted Payoff of the mortgage in the amount of $415,000 with a Contract of Sale of the Property to AML W36St Realty LLC.

13. Bayview sent its own BPO agent Christopher King of Joseph T. King Real Estate, Inc. at the Property to conduct an appraisal.

14. On August 2, 2017, Bayview approved a Discounted Payoff in the amount of $480,000. On August 8, 2017, the Debtor counter offered with a Contract of Sale in the amount of $450,000. **Exhibit B** (the "Contract of Sale").

15. On or about August 9, 2017, Bayview approved the Debtor for a Discounted Payoff in the amount of $450,000. *See* **Exhibit C** (Discounted Payoff Approval).

16. The Debtor, in order to satisfy all of its debts in full is seeking to sell the Property.

17. Debtor has agreed to sell the property free and clear of all liens, claims, encumbrances and other interests. The Sale transaction, however, is subject to and conditioned upon the Court's approval.

RELIEF REQUESTED

18. By this Application, the Debtor seeks entry of an order of this Court approving the Sale Transaction on the terms and conditions set forth in the Contract of Sale.

BASIS FOR RELIEF

A. Justification for a Private Sale

19. The Debtor requests that the Property be sold through a private sale. The Debtor believes that conducting the sale through a private sale is in the best interest of the estate rather than conducting the sale through an auction.

20. While section 363 sales are often conducted under competitive bidding procedures, there is no requirement in section 363 of the Bankruptcy Code to do so. Bankruptcy Rule 6004(f) specifically contemplates private sales with the statement that "[a]ll sales not in the ordinary course of business may be by private sale or by public auction".

21. Private sales may be appropriate under section 363 in circumstances similar to the instant case. *See In re Bakalis*, 220 B.R. 525, 531 (Bankr. E.D.N.Y. 1998) ("Unlike judicial sales under the Bankruptcy Act, the sale of estate property under the Bankruptcy Code is conducted by a trustee, who has ample discretion to conduct public or private sales of estate property."); *Penn Mut. Life Ins. Co. v. Woodscape Ltd. P'ship* (*In re Woodscape Ltd. P'ship*), 134 B.R. 165, 174 (Bankr. D. Md. 1991) (noting that, with respect to sales of estate property pursuant to section 363 of the Bankruptcy Code, "[t]here is no prohibition against a private sale . . . and there is no requirement that the sale be by public auction").

22. Accordingly, courts may approve private sales of assets where the standards for approval under section 363 of the Bankruptcy Code are satisfied. *See, e.g., In re Wellman, Inc.*, Case No. 08-10595 (SMB) (Bankr. S.D.N.Y. Oct. 6, 2009) (order approving the sales of one of the debtors' facilities' by private sale, not subject to higher and better offers). In the instant case, the private sale contemplated will easily generate sufficient revenue to pay all creditors in full satisfaction of their respective debts.

23. The Debtor does not believe an auction would generate higher or better offers or provide any other benefit to the Debtor's creditors. Moreover, additional and substantial costs associated with a competitive bidding process would not likely be sufficient to justify a sale auction.

24. It is submitted that the Property is a commercial property. The Debtor and the Purchaser are related parties. Magdaleno Lopez, the 100% equity holder of the Purchaser is related to Andres Lopez who is a 100% equity holder of the Debtor. The transaction was negotiated in good faith.

25. The Debtor believes that the necessity of bringing this case to a close and satisfying its debt in a timely manner dictate that a private sale be approved. For the foregoing reasons, the private sale of the Property as requested herein should be approved.

B. The Contract of Sale

26. On August 8, 2017, the Debtor and Purchaser executed a contract for the sale of the Property, a copy of which is annexed hereto as **Exhibit B** (the "Contract of Sale").

27. Pursuant to the Contract of Sale, Purchaser shall acquire, and the Debtor shall convey to Purchaser all of the right, title and interest that Debtor possesses as of the closing in and to Property, free and clear of all liens and liabilities pursuant to Sections 363(b) and (f) of the Bankruptcy Code and Rule 6004(f)(1) of the Federal Rules of Bankruptcy Procedure.

28. Except as expressly permitted or otherwise specifically provided for in the Contract of Sale and Settlement Statement (HUD-1), *see* **Exhibit D**, all persons and entities asserting liabilities of any kind against the Debtor or the Property prior to the Closing Date (as defined in the Contract of Sale), shall be forever barred from asserting such liabilities against Purchaser, their successors or assigns, their property, or the Property.

29. In consideration of the sale of the Property covered by the Contract of Sale, Purchaser will pay the Purchase Price of $450,000.00.

30. The other Creditors, National Grid and the NYC Water Board, will be paid by Purchaser at closing. **Exhibit D** (Settlement Statement).

C. Debtor's Sale Pursuant to Bankruptcy Code §363(b) and (f) is Appropriate

31. Section 363(b) of the Bankruptcy Code provides, in pertinent part, that the Debtor "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate". 11 U.S.C. §363(b)(1). As the Property constitutes the Debtor's ongoing business and is substantially all of the Debtor's assets, the proposed sale is out of the ordinary course of the Debtor's business.

32. Section 363 does not set forth an express standard for determining whether a sale of property under §363(b) should be approved. Courts have interpreted this section using an "articulated business judgment" standard. See, In re Lionel Corp., 722 F.2d 1063 (2d Cir. 1983); In re Ionosphere Clubs, Inc., 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989).

33. The Court of Appeals for the Second Circuit first enunciated this standard by stating: "The rule we adopt requires that a judge determining a §363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such application." *Lionel*, 722 F.2d at 1070-71.

34. Section 363(b) does not require that the Court substitute its business judgment for that of the Debtor. Rather, the Court should ascertain whether a debtor has articulated a valid business justification for the proposed transaction. This is consistent with "the broad authority to operate the business of the Debtor . . .[which] indicates congressional intent to limit Court involvement in business decisions by a Trustee . . . [so that] a Court may not interfere with a reasonable business decision made in good faith by a Trustee". *In re Airlift Int'l, Inc.*, 18 B.R. 787, 789 (Bankr. S.D. Fla. 1982).

35. Other courts have approved sales of a debtor's assets under §363(b)(1) of the Bankruptcy Code when (i) the sale is supported by the sound business judgment of the debtor's management; (ii) interested parties are provided with adequate and reasonable notice; (iii) the sale price is fair and reasonable; and (iv) the purchaser has acted in good faith. *See, e.g., In re Betty Owens Schools, Inc.*, WL 188127 at *4 (S.D.N.Y. 1997).

36. The sale will generate revenue sufficient to satisfy all creditors. The Debtor therefore submits that the proposed sale is in the best interests of its estate and creditors and should be approved by the Court.

D. The Debtor Has Exercised Sound Business Judgment and The Sale Price is Fair and Reasonable

37. The Debtor believes that the sale to the Purchaser represents a prudent and proper exercise of its business judgment and is supported by articulated business reasons because, absent such a sale its creditors would otherwise not realize full satisfaction of their debts.

38. The Debtor believes that the Contract of Sale represents substantial value to the Debtor's estate.

39. The Debtor submits that the Sale Transaction is the best opportunity to maximize the value of the Property by alleviating the estate of over one million ($1,000,000) dollars of obligations.

E. Asset Sale Free and Clear of Encumbrances

40. In addition to seeking approval of the sale of the Property outside of the ordinary course of business, the Debtor seeks approval to sell the Property free and clear of any and all liens, claims or encumbrances in accordance with §363(f) of the Bankruptcy Code.

41. A debtor-in-possession may sell property, pursuant to §§363(b) and 363(f), free and clear of any interest in such property of an entity other than the estate if one of the following conditions are satisfied:

(1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. §363(f).

42. It is submitted that both numbers one and three above apply to the instant proposed sale. Applicable non-bankruptcy law would permit the sale of the Property free and clear of liens because the sale generates sufficient revenue to satisfy all liens in full. In addition, the price that the property would be sold at under the proposed sale will satisfy the Discounted Payoff approved by Bayview. Accordingly, the Debtor is entitled, pursuant to §§363(b) and 363(f) to sell the Property free and clear of all liens, claims and encumbrances.

43. Further, the Debtor proposes to distribute the proceeds of the sale, in the total amount of $450,000 to Bayview Loan Servicing (the "Secured Lender") pursuant to Discounted Payoff.

NOTICE

44. Notice of this Application has been given to the following parties or, in lieu thereof, to their counsel, if know: (i) the United States Trustee for the Eastern District of New York; (ii) counsel for the Mortgagee, (iii) National Grid, (iv) NYC Water Board, and (v) parties who have filed a notice of appearance and request for service of pleadings in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is required.

NO PRIOR REQUEST

45. No prior request for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtor seeks the entry of an order (i) pursuant to §§363(b) and (f) of the Bankruptcy Code and Bankruptcy Rule 6004 authorizing the Debtor to sell the Property as defined in the Contract of Sale free and clear of any and all claims, liens, encumbrances and other interests, (ii) authorizing the distribution of the sale proceeds as set forth in the Motion, and (iii) granting the Debtor such other and further relief as the Court deems just and proper.

Dated: August 18, 2017
Queens, NY

By: */s/ Rashmi Attri*

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